

1 ROB L. PHILLIPS
Nevada Bar No. 8225
2 Rob.phillips@fisherbroyles.com
FISHERBROYLES, LLP
3 5670 Wilshire Blvd.
Suite 1800
4 Los Angeles, California 90036
Telephone: (702) 518-1239
5 *Counsel for Plaintiff*

6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 WEBSITE MANAGEMENT SYSTEMS,
LLC, a Nevada Limited Liability
9 Company

Case No.: 2:20-cv-00213

10 Plaintiff,

11 v.

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

12 BENJAMIN DAILED A, an individual
residing in Nevada, MELVIN OMAN, an
13 individual residing in Nevada, DEVAN
HIRST, an individual residing in Nevada,
14 YES WE WILL, INC., a Nevada
Corporation, and DOES 1-X,

15 Defendants.
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18 Pursuant to Nev. Rev. Stat. § 600A.010, *et seq.*, and the terms and covenants of
19 contractual agreements, Plaintiff Website Management Systems, LLC ("WMS"), a Nevada
20 Limited Liability Company ("Plaintiff"), by and through its counsel of record, hereby moves this
21 Court for a Temporary Restraining Order and for entry of a Preliminary Injunction against
22 Defendants Benjamin Daileda ("Daileda"), Melvin Oman ("Oman"), Devan Hirst ("Hirst") and
23 Yes We Will, Inc. ("Yes We Will") (collectively "Defendants").

24 Plaintiff bases this Motion for Temporary Restraining Order and Preliminary Injunction
25 (the "Motion") on the pleadings and records on file herein, the Memorandum of Points and
26 Authorities set forth below, the Declaration of Rob Raskin ("Raskin Decl."), all of which are
27 attached hereto and incorporated herein by this reference, and any oral argument of counsel
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1 received by this Court.

2 3 I. INTRODUCTION

4 Plaintiff seeks the entry of a temporary restraining order and thereafter a preliminary
5 injunction against Defendants Daileda, Oman, Hirst and Yes We Will, to prohibit the wrongful
6 possession and wrongful use and disclosure of Plaintiff's trade secrets and proprietary
7 information and data, including without limitation business strategies, sales presentations, initial
8 customer pitches, methods of securing reliable leads for new customers, retaining qualified
9 customers, customer lists, website features, and trade secrets including: (i) a process for
10 optimizing the search results position of a customer's website based on key words; (ii) a detailed
11 in-house procedure for identifying leads; (iii) list of leads generated from the detailed in-house
12 procedure for identifying leads; (iv) a password protected website demo which Plaintiff uses to
13 show customers the benefits of utilizing Plaintiff's search engine optimization tools; and (v) a
14 detailed in-house order fulfillment procedure to satisfy customer needs, as well as other related
15 proprietary/confidential information and data (collectively "Plaintiff's Confidential Data").

16 Plaintiff further seeks the entry of a temporary restraining order and thereafter a
17 preliminary injunction against Defendants Daileda, Oman and Hirst from competing with
18 Plaintiff pursuant to the Non-Compete provisions set forth in their respective employment
19 agreements ("Employment Agreements").

20 Each of the Defendants Daileda, Oman and Hirst were employed under their respective
21 at-will Employment Agreements until about the end of December 2019 and beginning of January
22 2020.

23 On or about January 23, 2020, WMS received a call from a customer asking if Plaintiff
24 had called because the customer had received a call from a number with a 702 area code and
25 heard the same sales presentation used by Plaintiff. On or about January 24, 2020, a second
26 customer called Plaintiff with a similar story. Based on the aforementioned calls, Plaintiff began
27 an investigation and learned that Defendants had committed, and continue to commit, wrongful
28 acts against Plaintiff. Defendants have refused to cooperate with Plaintiff to resolve this matter

1 without judicial intervention.

2 Plaintiff is therefore forced to seek injunctive relief because Plaintiff is exposed to, have
3 suffered, and will continue to suffer, irreparable harm to their business, and to their economic
4 and competitive positions, due to the willful, intentional and wrongful misappropriation of
5 Plaintiff's Confidential Data by Defendants. Absent an injunction enjoining the wrongful
6 possession of, use, dissemination, disclosure and/or exploitation of Plaintiff's Confidential Data,
7 Plaintiff will continue to suffer irreparable harm.

8 Plaintiff is further forced to seek injunctive relief due to the breach of Non-Compete
9 provisions by Defendants Daileda, Oman and Hirst causing Plaintiff irreparable harm to its
10 business, and to its economic and competitive positions. Absent an injunction enjoining
11 Defendants Daileda, Oman and Hirst from competing with Plaintiff, Plaintiff will continue to
12 suffer irreparable harm.

13 **II. STATEMENT OF RELEVANT FACTS**

14 **A. Basis For The Motion**

15 This action as detailed in Plaintiff's Complaint (Dkt. No. 1) arises out of Defendants'
16 Daileda, Oman and Hirst breach of their at-will Employment Agreements with Plaintiff and
17 Defendants violation of Nevada's Uniform Trade Secrets Act ("UTSA") (or their violations of
18 Nevada common law) regarding the protection of, unauthorized receipt of, and unlawful
19 possession of and control of confidential and proprietary information.

20 In plain violation of the express terms and conditions of their Employment Agreements,
21 Defendants' Daileda, Oman and Hirst systematically collected Plaintiff's Confidential Data for
22 their own personal benefit for their own personal benefit. Further, Defendants' Daileda, Oman
23 and Hirst have transferred Plaintiff's Confidential Data to their new entity, Yes We Will.
24 Accordingly, Defendants have misappropriated considerable trade secrets and proprietary and
25 confidential assets rightfully belonging to Plaintiff and through concerted and willful efforts
26 obtained such assets to improperly utilize the same for their own benefit and/or the benefit of
27 others.
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1 In plain violation of the express terms and conditions of their Employment Agreements,
 2 Defendants' Daileida, Oman and Hirst started a competing business prior to leaving employment
 3 with Plaintiff¹. The new business operates in the same city (Las Vegas) as Plaintiff, offers the
 4 identical services as Plaintiff and relies on Plaintiff's Confidential Data to unfairly compete.

5 Plaintiff therefore seeks entry of a temporary restraining order and a preliminary
 6 injunction that enjoins Defendants and any and all agents, servants, partners and any other person
 7 or entities acting for, with, by or through, under, or in association with Defendants, from (1)
 8 possessing, using, exploiting, disclosing or disseminating Plaintiff's Confidential Data; (2)
 9 utilizing the misappropriated Plaintiff's Confidential Data for the benefit of themselves and/or
 10 any third party; (3) requiring Defendants to immediately return any and all electronic or hard
 11 copies of Plaintiff's Confidential Data to Plaintiff; (4) requiring Defendants to identify each
 12 computer, storage device or storage medium to which Defendants migrated or copied Plaintiff's
 13 Confidential Data; (5) requiring Defendants to identify each person and entity, including a name,
 14 address, telephone number and email address, to whom Defendants shared Plaintiff's
 15 Confidential Data; (6) requiring to Defendants to preserve Plaintiff's Confidential Data that it
 16 possesses pending further order of this Court; and (7) requiring Defendants to cease competing
 17 with Plaintiff pursuant to the terms and conditions of their respective Employment Agreements.

18 **B. Plaintiff's Confidential Data**

19 As part of its business operations, Plaintiff created valuable confidential and proprietary
 20 information including existing customer lists, prospective customer lists, website content and
 21 methodologies for: (i) optimizing the effectiveness of websites to be located by search engines;
 22 (ii) finding qualified customers, (ii) selling/closing qualified customers; (iii) servicing qualified
 23 customers and (iv) retaining qualified customers. Raskin Decl., at ¶3. Plaintiff's business
 24 operations involve search engine optimization and custom website development. Raskin Decl., at
 25 ¶2. Search engine optimization is the practice of manipulating a website to ensure that it appears
 26 on a first page or other high ranking page of search results responsive to certain keywords being

27 _____
 28 ¹ Evidence shows that Defendants Daileida, Oman and possibly Hirst formed the entity Yes We Wil, Inc. to compete
 with Plaintiff while employed by Plaintiff.

1 searched. Raskin Decl., at ¶2. Plaintiff accomplishes this objective using Plaintiff's Confidential
2 Data in a proprietary manner. Raskin Decl., at ¶2. More precisely, WMS has developed a very
3 detailed and specific process for optimizing the search results position of a customer's website
4 based on key words. Raskin Decl., at ¶2. Importantly, WMS' process, and confidential
5 campaign websites, allows the customer's website to remain unchanged and uninterrupted.
6 Raskin Decl., at ¶2. WMS has further developed different sales packages, price points,
7 procedures for determining key phrases, etc. Raskin Decl., at ¶2.

8 WMS also builds behind-the-scene campaign websites that allow WMS to achieve first
9 page placement for the valuable key phrases that its customers select. The development of the
10 campaign website varies in size based upon the number of key phrases the customer selects.
11 Thus, the customer essentially ends up with two websites with the confidential campaign website
12 acting as the "Marketing Engine" for the customer's public-facing website. Raskin Decl., at
13 ¶2.

14 WMS also sells LLC's, corporate credit and business plans in addition to campaign
15 websites, custom websites along with various upgrades and renewals. Raskin Decl., at ¶4. WMS
16 uses three suppliers that provide the LLCs, corporate credit and business plans, respectively.
17 Raskin Decl., at ¶4. Plaintiff believes that Defendants are using WMS' vendors in conjunction
18 with its Confidential Data. Raskin Decl., at ¶4.

19 Regardless of which business is involved, Plaintiff's Confidential Data has given Plaintiff
20 an advantage in optimizing search engine results for its customers as well as (i) finding qualified
21 customers, (ii) selling/closing qualified customers; (iii) servicing qualified customers and (iv)
22 retaining qualified customers. Such business advantages are valuable to Plaintiff. Raskin Decl.,
23 at ¶3. Plaintiff's trade secret information fits into at least five categories comprising: (i) a
24 process for optimizing the search results position of a customer's website based on key words;
25 (ii) a detailed in-house procedure for identifying leads; (iii) list of leads generated from the
26 detailed in-house procedure for identifying leads; (iv) a password protected website demo which
27 Plaintiff uses to show customers the benefits of utilizing Plaintiff's search engine optimization
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1 tools; and (v) a detailed in-house order fulfillment procedure to satisfy customer needs. Raskin
2 Decl., at ¶5.

3 Importantly, to maintain its competitive advantages, Plaintiff must maintain the
4 confidentiality of its Confidential Data. Decl., at ¶6. Unrestricted dissemination and use of
5 Plaintiff's Confidential Data is causing Plaintiff irreparable harm. Raskin Decl., at ¶6. To
6 prevent such irreparable harm, Plaintiff employs strict measures to maintain their proprietary
7 information and data as confidential. Raskin Decl., at ¶6. All employees must agree to
8 confidentiality provisions in their employment agreements. Raskin Decl., at ¶7. Moreover,
9 Plaintiff systematically and routinely reminds employees of their obligations of confidentiality.
10 Raskin Decl., at ¶7. Plaintiff further restricts access to and use of Plaintiff's Confidential Data to
11 higher-level employees and those with a need to know. Raskin Decl., at ¶7. Plaintiff further
12 mandates employees use password-protected computer systems and networks. Raskin Decl., at
13 ¶7.

14 **C. Employment Agreements**

15 Each of Defendants' Daileda, Oman and Hirst executed Employment Agreements having
16 Confidentiality and Non-Compete provisions. Raskin Decl., at ¶8. Defendants Daileda, Oman
17 and Hirst started a competing business Yes We Will while still employed at WMS. Raskin
18 Decl., at ¶9. Yes We Will was formed on May 11, 2019 listing Daileda as President and
19 Treasurer and Oman as Secretary and Director². (See, Exhibit D) Raskin Decl., at ¶9. Yes We
20 Will operates in the same city (Las Vegas) as Plaintiff, offers the identical services as Plaintiff
21 and relies on Plaintiff's Confidential Data to unfairly compete. Raskin Decl., at ¶9. By way of
22 example, Yes We Will uses a nearly identical sales pitch as Plaintiff, has copied the look and feel
23 (and some text verbatim) of Plaintiff's website and utilizes the same proprietary search engine
24 optimization schemes as Plaintiff. Raskin Decl., at ¶9.

25 **D. Defendants' History With Plaintiff**

26 On or about December 4, 2006, Benjamin Daileda executed an at-will employment
27

28 ² This was while Daileda and Oman were employed by Plaintiff.

1 agreement with KJR Management LLC and on or about January 5, 2009 Benjamin Daileda
 2 executed a confidentiality agreement with KJR Management LLC³. (see, Exhibit A). Raskin
 3 Decl., at ¶10. Daileda became a leading salesperson and closer at Plaintiff during his 12 years of
 4 employment. Raskin Decl., at ¶10. Daileda was trusted with a key to the office gate, office door
 5 and alarm code allowing him to come and go as he pleased. Raskin Decl., at ¶10. To date, the
 6 gate key, door key and alarm fob have not been returned forcing Plaintiff to change the locks and
 7 cancel the code. Raskin Decl., at ¶10. On or about January 5, 2020, Daileda sent a text message
 8 to Rob Raskin of WMS stating that he needed to move on. Raskin Decl., at ¶10. December 27th,
 9 2019 was Daileda's last day worked at WMS. Raskin Decl., at ¶10.

10 On or about June 11, 2015, Oman executed an at-will employment agreement with KJR
 11 Management LLC. (see, Exhibit B). Raskin Decl., at ¶11. Oman became Superintendent of
 12 Plaintiff, was listed as a Manager on an entity related to and affiliated with Plaintiff and held two
 13 merchant accounts for Plaintiff. Raskin Decl., at ¶11. On or about January 6, 2020, Oman sent a
 14 text message to Rob Raskin stating that he was sick, and followed up on January 7, 2020 with a
 15 second text message to Rob Raskin stating that he decided he was going to stay home, rest and
 16 recover. Raskin Decl., at ¶11. Oman never returned to work at WMS. Raskin Decl., at ¶11.
 17 January 3rd, 2020 was Oman's last day worked at WMS. Raskin Decl., at ¶11.

18 On or about October 15, 2012, Hirst executed an at-will employment agreement with
 19 KJR Management LLC. (see, Exhibit C)⁴. Raskin Decl., at ¶12. Hirst became a leading
 20 salesperson and closer at Plaintiff during his 7 years of employment. Raskin Decl., at ¶12. On or
 21 about December 29, 2019, Hirst sent a text message to HR personnel at WMS stating that he
 22 needed another week off in addition to the holiday break. Raskin Decl., at ¶12. The request was
 23 denied and Hirst never returned to work at WMS. Raskin Decl., at ¶12. December 20th, 2019
 24 was Hirst's last day worked at WMS. Raskin Decl., at ¶12.

25 Based on the timing of Defendants' Daileda, Oman and Hirst departing WMS, the

26 ³ KJR Management LLC is the predecessor company to Plaintiff. Raskin Decl., at ¶8.

27 ⁴ A portion of Hirst's Employment Agreement has not yet been located but he signed an Employment Agreement
 28 and associated confidentiality agreement identical to those signed by Daileda and Oman as all employees are
 required to do so.

considerable responsibility, authority and knowledge they represented, and concerning customer calls received after their departure from WMS, Plaintiff became suspicious and began an investigation. Raskin Decl., at ¶13.

III. MEMORANDUM OF POINTS AND AUTHORITIES

A. Temporary Injunctive Relief is Warranted

Plaintiff is entitled to immediate injunctive relief against the Defendants pursuant to (i) the provisions of NRS § 600A.040 and (ii) the breach of their respective Employment Agreements.

Pursuant to the UTSA, this Court may enjoin any “actual or threatened misappropriation” and, in appropriate circumstances, take “affirmative acts to protect a trade secret.” NRS § 600A.040. Moreover, under federal and Nevada jurisprudence, issuance of immediate temporary relief in a matter such as this is both warranted and encouraged. *Danberg Holdings Nevada, LLC v. Douglas County*, 115 Nev. 129, 146, 978 P.2d 311, 321 (Nev. 1999) (citation omitted); *see also, Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20, 129 S.Ct. 365, 376 (2008) (injunctions are extraordinary remedies, never awarded as of right, but based on a balance of competing claims of injury and the effect on each party of awarding or denying the requested injunction). As this Court said, unique and non-duplicable intellectual property assets such as Plaintiff’s Confidential Data are highly sensitive and worthy of protection through injunctive relief:

Public disclosure of a trade secret destroys the information’s status as a trade secret. This harms the trade secret owner by both depriving him of a property interest...and by allowing his competitors to reproduce his work without an equivalent investment of time and money. Disclosure of non-trade secret confidential information is similarly recognized as a serious harm.

Saini v. Int’l Game Technology, 434 F. Supp.2d 913, 919 (D. Nev. 2006) (citations omitted).

As set forth herein, this matter involves the same harm noted above. Should Defendants be permitted to continue possession and use of Plaintiff’s Confidential Data, Plaintiff will continue to suffer irreparable harm, loss and damage absent injunctive relief. Defendants are

1 using Plaintiff's Confidential Data to cut into Plaintiff's business for their own personal benefit.
 2 This is exactly the type of harm that the injunctive relief contemplated by the UTSA is intended
 3 to prevent.

4 Moreover, each of Defendants Daileida, Oman and Hirst is breaching the Confidentiality
 5 and Non-Complete provisions of their respective Employment Agreements. Once again, this is
 6 the exact type of harm that injunctive relief is well-suited to remedy.

7 Plaintiff is likely to succeed on the merits for each of their claims for relief under the
 8 UTSA, and breach of contract and Plaintiff will suffer irreparable harm unless Defendants are
 9 enjoined from continuing with their wrongful conduct related to those claims. In addition, the
 10 balance of hardships absent entry of a temporary restraining order and preliminary injunction
 11 weigh in favor of Plaintiff. Consequently, based on the likelihood of success on the merits and
 12 the balance of hardships favoring the Plaintiff, the issuance of a temporary restraining order and
 13 preliminary injunction is justified.

14 **B. The Standard for Obtaining a Preliminary Injunction**

15 Plaintiff bears the burden of demonstrating that preliminary injunctive relief is warranted.
 16 In the Ninth Circuit, whether injunctive relief should issue requires that plaintiff demonstrate: (1)
 17 a strong likelihood of success on the merits; (2) a likelihood of irreparable harm to the plaintiff
 18 absent injunctive relief; (3) that the balance of equities favors the plaintiff; and (4) that issuance
 19 of an injunction is in the public interest. *Adidas America, Inc., et al. v. Skechers USA, Inc.*, 800
 20 F.3d 747, 753 (9th Cir. 2018). The test in Nevada is similar whereby injunctive relief is available
 21 if: (1) the party seeking such relief enjoys a reasonable likelihood of success on the merits and
 22 (2) the party's conduct to be enjoined, if permitted to continue, will result in irreparable harm for
 23 which compensatory damages are an inadequate remedy. *Sobel v. Capital Management*
 24 *Consultants, Inc.*, 102 Nev. 444, 446, 726 P.2d 335, 337 (1986).

25 In this instance, all factors favor granting Plaintiff's request for injunctive relief.

26 **C. Plaintiff Meets Its Burden for Obtaining Injunctive Relief**

27 **1. Likelihood of Success on the Merits of the Primary Claims for Relief**

1 There is a strong likelihood that Plaintiff will succeed on the merits and thereby satisfy
2 the first prong of the Ninth Circuit's test set down in *Adidas America*.

3 (a) Misappropriation of Trade Secrets

4 To establish the claim of misappropriation of trade secrets under both federal and state
5 law, Plaintiff must show: (a) the existence of a valuable trade secret; (b) misappropriation of the
6 trade secret through acquisition, use, disclosure or non-disclosure of use of the trade secret; and
7 (c) proof that the misappropriation is wrongful; because it was made in breach of an express or
8 implied contract or by a party with a duty not to disclose. *Frantz v. Johnson*, 116 Nev. at 466,
9 999 F.2d at 358.

10 (i) Plaintiff's Confidential Data are Trade Secrets

11 Plaintiff's Confidential Data, namely its trade secrets are subject to protection under the
12 UTSA. A trade secret is information "[that] is secret and which is not generally available to the
13 public, and which gives one who uses it an advantage over competitors who do not know or use
14 the trade secret." *Religious Tech. Center v. Wollersheim*, 796 F.2d 1076, 1091 (9th Cir. 1986)
15 (citing *People v. Serrata*, 133 Cal. Rptr. 144, 152 (Cal. Ct. App. 1976).

16 Plaintiff's Confidential Data identified as trade secrets fits within the definition of a
17 "trade secret" under the UTSA. Plaintiff possess at least five categories of trade secret
18 information comprising: (i) a process for optimizing the search results position of a customer's
19 website based on key words; (ii) a detailed in-house procedure for identifying leads; (iii) a list of
20 leads generated from the detailed in-house procedure for identifying leads; (iv) a password
21 protected website demo which Plaintiff uses to show customers the benefits of utilizing
22 Plaintiff's search engine optimization tools; and (v) a detailed in-house order fulfillment
23 procedure to satisfy customer needs.

24 Moreover, trade secret information has and continues to provide Plaintiff with an
25 advantage over its competitors. Plaintiff's success in the market is based largely on the trade
26 secrets identified above which have been cultivated and optimized over more than 14 years in the
27 search engine optimization and website development business. Access and use of the trade
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secrets provides Defendants with immediate legitimacy in the market and circumvents the need to undertake the time-consuming, expensive and dedicated efforts that Plaintiff undertook to develop the trade secrets in the first place. Without use of Plaintiff's trade secrets, Defendants would have had no reasonable opportunity to effectively hit the ground running in the search engine optimization market and related markets as quickly as they have.

Plaintiff has taken reasonable steps to protect its Confidential Data including its trade secrets from disclosure. Plaintiff requires all employees to execute confidentiality agreements as part of their employment agreements, Plaintiff systematically and routinely reminds employees of their obligations of confidentiality, Plaintiff further restricts access to and use of its trade secrets and proprietary/confidential information and data to higher-level employees and those with a need to know and Plaintiff mandates employees use password-protected computer systems and networks. Defendants knew of Plaintiff's measures to keep its Confidential Data protected as each of their Employment Agreements included confidentiality provisions and each of the Defendants was aware of the measures employed by Plaintiff to protect its Confidential Data.

(ii) Defendants Have Misappropriated Plaintiff's Confidential Data

The USTA defines "misappropriation" as "acquisition or a trade secret by a person who knows or has reason to know that the trade secret was acquired by improper means" or "disclosure or use of a trade secret of another without express or implied consent" in specified circumstances. *See*, NRS § 600A.030. Consequently, the USTA contemplates three theories of liability: (1) acquisition, (2) disclosure or (3) use." *Cave Consulting Grp., Inc., Truven Health Analytics Inc.*, No. 15-cv-2177 (SI), 2017 WL 1436044, at *4 (N.D. Cal. Apr. 24, 2017). The appropriation of a trade secret is wrongful where the acquisition or disclosure is without authority or is expressly or impliedly prohibited by contract or a duty prohibiting the same. *See*, NRS § 600A.030(2); *Frantz v. Johnson*, 116 Nev. at 466, 999 P.2d at 358.

In this instance, prior to quitting his employment with Plaintiff, Defendant Daileda forwarded at least 19 leads generated by Plaintiff to his personal email account. (see, Exhibit E). Raskin Decl., at ¶14. The only reason to do so was to steal the leads. Raskin Decl., at ¶14.

Doing so was also a violation of his Employment Agreement. Raskin Decl., at ¶14. By contacting Defendant Yes We Will and posing as a prospective customer, Plaintiff has learned that Defendants are using Plaintiff's same proprietary search engine optimization schemes, entire proprietary website demo and exact sales pitch word-for-word. Raskin Decl., at ¶15. Moreover, Defendants' follow-up actions to prospective customers mirror Plaintiff's exact proprietary methodology. Raskin Decl., at ¶15. In addition, Plaintiff has been contacting leads which have already been contacted by Defendants indicating that Defendants are further using Plaintiff's proprietary, detailed process for identifying leads. Raskin Decl., at ¶15. Defendants are offering, for example, search engine optimization packages for a minimum of \$1995 and other services in direct competition with Plaintiff. (see, Exhibit F). Raskin Decl., at ¶15.

Given the experience and knowledge of Defendants Daileda, Oman and Hirst relative to the business operations of WMS, it is nearly a certainty that Plaintiffs will discover additional evidence through discovery to support its claims that Defendants have acquired and are using all of Plaintiff's trade secrets. Nonetheless, Defendants have already acquired and are using Plaintiff's trade secrets, as set forth herein, in violation of the USTA such that Plaintiff is very likely to succeed on these claims.

(iii) Defendants Misappropriation Breached Duties Owed to Plaintiff

Each of Defendants Daileda, Oman and Hirst executed Employment Agreements and confidentiality agreements including Confidentiality and Non-Disclosure provisions. *See*, Exhibits A, B and C. Defendants Daileda, Oman and Hirst are each bound to the terms and conditions of their Employment Agreements which clearly and unambiguously set forth their obligations to maintain the confidentiality of Plaintiff's Confidential Data for a period of two (2) years after expiration or termination thereof. Defendants Daileda, Oman and Hirst left the employment of Plaintiff less than two months ago and are running a competing business that they started approximately eight months prior to voluntarily terminating their employment at WMS and using the time to steal as many prospective customers and as much of Plaintiff's Confidential Data as they could causing huge financial harm to the Plaintiff as a result.

1 Defendant Yes We Will is operated by Defendants Daileda, Oman and Hirst and thus is aware
2 that it is similarly using Plaintiff's trade secrets without authorization.

3 Accordingly, based on the foregoing, Plaintiff has established a likelihood of success on
4 the merits relative to its claims for violations of the UTSA.

5 (b) Breach of Contract

6 Plaintiff is also likely to succeed on its claim for breach of contract relative to the
7 Employment Agreements executed by Defendants Daileda, Oman and Hirst. Each of Defendants
8 Daileda, Oman and Hirst have violated the Confidentiality provisions of the Employment
9 Agreements as well as the Non-Compete provisions.

10 Each confidentiality agreement includes a provision of confidentiality that lasts for two
11 (2) years from termination or expiration of the same. (See, Exhibits A, B and C). Defendants
12 Daileda, Oman and Hirst each left the employment of Plaintiff less than two months ago. As set
13 forth above, Defendants have acquired and used Plaintiff's trade secrets without authorization.
14 Moreover, Defendants have wrongfully used other of Plaintiff's Confidential Data such as
15 presentation or pitch materials, pricing models, business strategies, deal closing points, etc., for
16 their own benefit.

17 Each confidentiality agreement further includes a Non-Compete provision under which
18 Defendants Daileda, Oman and Hirst agreed to not "...directly or indirectly be involved with a
19 business which is in direct competition with the particular business line of the Employer that the
20 Employee was working at any time in the last year of employment with the Employer." By
21 starting a new active business involved in the search engine optimization business and related
22 buyeinesses, Defendants have clearly breached their Employment Agreements with Plaintiff.

23 Moreover, at least Defendant Daileda has breached a second Non-Compete provision
24 reciting in part that "...the Employee will not divert or attempt to divert from the Employer any
25 business the Employer had enjoyed, solicited or attempted to solicit, from its customers, prior to
26 termination or expiration, as the case may be, of the Employment. As set forth above, while
27 employed by Plaintiff, Defendant Daileda directed at least 19 sales leads procured by Plaintiff to
28

1 his own personal email account presumably for later contact by Defendant Yes We Will. (see,
2 Exhibit E).

3 Based on the foregoing, Defendants Daileida, Oman and Hirst have blatantly breached
4 their Employment Agreements with Plaintiff. Thus, Plaintiff has established a likelihood of
5 success on the merits for its breach of contract claims.

6 **2. Plaintiff Has Suffered and Continues to Suffer Irreparable Harm**
7 **Absent Injunctive Relief**

8 Absent injunctive relief, Defendants will continue to possess and use Plaintiff's
9 Confidential Data including trade secrets in violation of the UTSA to their benefit and Plaintiff's
10 detriment. Moreover, Defendants will continue to be in breach of the Confidentiality and Non-
11 Compete provisions of their Employment Agreements.

12 Irreparable harm is that injury which is so serious that a monetary award cannot
13 adequately compensate the injured party. The 9th Circuit will not presume irreparable harm. A
14 likelihood of irreparable harm requires a plaintiff to demonstrate that such harm is more probable
15 than not. *Winter v. NRDC*, 555 U.S. 7, 19–23 (2008).

16 Courts that have adhered to the formula in *Winter* have found that a likelihood of
17 irreparable harm exists where plaintiffs have provided evidence of specific, manifest acts by
18 defendants, such as evidence of utilization or attempted utilization of a plaintiff's trade secrets,
19 evidence of competition with a plaintiff after acquiring a plaintiff's trade secrets, or evidence of
20 solicitation of customers, especially a plaintiff's, after obtaining a plaintiff's trade secrets. *E.g.*,
21 *H.Q. Milton, Inc. v. Webster*, No. 17-CV-06598-PJH, 2017 WL 5625929, at *4 (N.D. Cal. Nov.
22 22, 2017) (holding that a plaintiff established irreparable harm where a defendant utilized
23 confidential information and trade secrets and solicited the plaintiff's customers); *Henry Schein,*
24 *Inc. v. Cook*, 191 F. Supp. 3d 1072, 1077 (N.D. Cal. 2016) (granting a temporary restraining
25 order where a defendant allegedly misappropriated customer information and sought to solicit
26 and divert a plaintiff's customers); *Aerodynamics Inc. v. Ceasars Entm't Operating Co.*, No.
27 2:15-CV-01344-JAD, 2015 WL 5679843, at *12 (D. Nev. Sept. 24, 2015) (holding that a
28 likelihood of irreparable harm existed where a defendant contacted a seller, former customer,

1 manufacturer, and competitor after a deal fell through with a plaintiff and the defendant gained
 2 confidential information); *Richmond Techs., Inc. v. Aumtech Bus. Sols.*, 11-02460C, 2011 WL
 3 2607158, at *22 (N.D. Cal. July 1, 2011) (“[T]o the extent that Defendants are using Plaintiff’s
 4 trade secrets to compete with Plaintiff and to encourage Plaintiff’s customers to switch their accounts
 5 . . . the Court agrees that Plaintiff has shown a likelihood of irreparable harm.”); *Credit Bureau*
 6 *Connection*, 726 F. Supp. 2d at 1123 (holding that irreparable harm existed where a defendant
 7 admitted to blocking, interfering, and diverting existing customers and new potential customers of a
 8 plaintiff). In this instance, it is clear that Defendants have not only acquired Plaintiff’s trade
 9 secrets but are, in fact, using them to promote a competing business. As detailed above,
 10 Defendants have started an active business promoting search engine optimization in direct
 11 competition with Plaintiff and are using Plaintiff’s Confidential Data including trade secrets to
 12 actively steal market share from Plaintiff. The harm is occurring as this Motion is being drafted
 13 and prepared for filing. Indeed, every day Defendants continue to use Plaintiff’s Confidential
 14 Data is another day that Plaintiff’s Confidential Data diminishes in value to the detriment of
 15 Plaintiff. Raskin Decl., at ¶16.

16 **3. The Relative Interests of the Parties Favors Plaintiff**

17 “An employee’s mere ability to take advantage of the employer’s confidential
 18 information and thereby gain an unfair advantage may be sufficient for equity to restrain the
 19 employee from engaging in a competing business.” *Nike, Inc. v. McCarthy*, 379 F.2d 576, 586
 20 (9th Cir. 2004). Further, a “preliminary injunction maintaining the status quo may properly issue
 21 whenever the questions of law or fact to be ultimately determined in a suit are grave and
 22 difficult, and injury to the moving party will be immediate, certain and great if it is denied, while
 23 the loss or inconvenience to the opposing party will be comparatively small and insignificant if it
 24 is granted.” *Danberg Holdings*, 115 Nev. at 146, 978 P.2d at 321.

25 Equity favors issuance of the injunctive relief in this instance. Defendants knowingly
 26 entered into the Employment Agreements understanding that they were obligated to maintain the
 27 confidence of Plaintiff’s Confidential Data including its trade secrets and not compete with
 28

1 Plaintiff for a period of two (2) years. However, before even leaving the employment of
 2 Plaintiff, at least Defendants Dialeda and Oman, began efforts to start a competing business by
 3 re-directing leads to a personal email account and, on May 19, 2019, seven months before
 4 leaving the employment of Plaintiff, forming the entity Yes Will We, Inc., that now competes
 5 with Plaintiff. By ordering the injunctive relief, the Court will merely be placing Defendants in
 6 the position they agreed to be placed via their Employment Agreements. By not ordering the
 7 injunctive relief, the Court is jeopardizing Plaintiff's business as a whole or at a minimum
 8 greatly reducing the advantages and value it has long sought to create.

9 The equities in this matter clearly favor Plaintiff.

10 **4. The Public Interests Favor Plaintiff**

11 The adoption of the UTSA by the state of Nevada shows there is a strong public interest
 12 in protecting trade secrets. *Prot. Techs., Inc. v. Ribler*, 3:17-cv-00144-LRH-WGC (D. Nev.
 13 March 8, 2017). One of the primary benefits associated with the UTSA is the ability for injured
 14 parties to secure injunctive relief. No public interests favors Defendants' actions of trade secret
 15 misappropriation and breach of contract.

16 **D. Security Under Fed. R. Civ. P. 65(c)**

17 Plaintiff requests and opines that no or nominal security is required in this case under
 18 Fed. R. Civ. P. 65(c). Plaintiff seeks to only enjoin Defendants from doing what Defendants
 19 willingly and knowingly agreed to do – not misappropriate Plaintiff's Confidential Data and not
 20 compete with Plaintiff. Defendants will not be damaged by being positioned exactly where they
 21 agreed to be positioned when they accepted employment from Plaintiff. Absent any credible
 22 harm raised by Defendants, no security or limited security is requested.

23 **IV. CONCLUSION**

24
 25 Based on the foregoing points and authorities, Plaintiff has shown a likelihood of success
 26 on the merits of the relevant claims of trade secret misappropriation and breach of contract
 27 against Defendants. The remaining three factors, namely the balance of hardships, relative
 28

1 interests of the parties and the public interest all favor the Plaintiff. Therefore, Plaintiff
2 respectfully requests that this Court grant a temporary restraining order and preliminary
3 injunction pending final disposition of this case.

4 DATED this 24th day of February 2020.

5 Respectfully submitted,

6 **FISHERBROYLES, LLP**

7
8 /s/ Rob L. Phillips

9 _____
10 ROB L. PHILLIPS, ESQ.
11 Nevada Bar No. 8225
12 5670 Wilshire Blvd., Suite 1800
13 Los Angeles, CA 90036
14 Telephone: (702) 518-1239
15 *Counsel for Plaintiff*

FISHERBROYLES, LLP
5670 Wilshire Blvd., Suite 1800
Los Angeles, CA 90036
Telephone: (702) 518-1239

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of February 2020, a true and correct copy of
**PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION, DECLARATION OF ROB RASKIN IN SUPPORT
THEREOF AND EXHIBITS** were served via The Court's ECF System as follows:

COHEN JOHNSON PARKER EDWARDS

375 E. Warm Springs Rd., Ste. 104

Las Vegas, Nevada 89119

H. STAN JOHNSON, ESQ.

sjohnson@cohenjohnson.com

RYAN D. JOHNSON, ESQ.

rjohnson@cohenjohnson.com

/s/ Rob L. Phillips

Rob Phillips, an employee of FisherBroyles, LLP